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IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

Cr. A. No. 263 /2004

CRIMINAL APPEAL U/S. 374 (2) OF Cr.P.C.

APPELLANT : Kartik, S/o. Ghunghuti Panara
Aged 45 Years, occupation
Agriculturist, R/o. Village Tarapur
P.S. Nagarnar, District
Middle Bastar (C.G.)

(IN JAIL)

11/4/04

filed on 11/03/04
by Shri Miss Sangita Mishra
Advocate

R. to B. R. (J)
4/2/04

VERSUS

RESPONDENT : The State of Chhattisgarh
Through P.S. Farasgaon
District Middle Bastar (C.G.)

AGAINST THE JUDGEMENT AND CONVICTION DATED 13.02.2004 PASSED IN SPECIAL CASE NO. 46/2003 BY THE SPECIAL JUDGE N.D.P.S. ACT, BASTAR, AT JAGDALPUR, (C.G)

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.263/2004

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh

Kartik

Vs.

State of Chhattisgarh

PRESENT: -

Ms. Sangita Mishra, counsel for the accused-appellant.
Shri U.K.S.Chandel, Panel Lawyer for the State.

ORAL JUDGMENT
(Delivered on 09-03-2006)

This appeal is directed against the judgment dated 13-02-2004 delivered in Special Case No.46/2003 by Shri R.S.Sharma, learned Sessions Judge, N.D.P.S. Act., Bastar, Headquarter at Jagdalpur whereby the appellant was convicted under Section-20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act. 1985 (hereinafter referred to as the "Act") and was sentenced to R.I. for 4 years and a fine of Rs.15,000/- and in default of payment of fine to undergo additional R.I. for 1 year.

2. Briefly stated the prosecution story is that on 17-10-2003 Sub Inspector Arvind Dwivedi, Station House Officer of Police Station-Pharasgaon upon receiving secret information about the possession of illicit ganja by a person, reached Badedongar Triangle along with staff

and witnesses and apprehended the appellant who was carrying a red & blue coloured ragzine bag. After serving the appellant with a notice under Section-50 of the Act and also after obtaining the consent of the appellant to be searched by him, Sub Inspector Arvind Dwivedi PW-5 searched the ragzine bag carried by the appellant and found ganja like substance therein. The substance was weighed by Tej ram Sahu PW-3 at the place of occurrence and was found to weigh 8 kilogram. Two samples of 50 g.m. each were separated and packed and marked as Article A-1 & A-2 and were sealed. Specimen impression of seal used by the Sub Inspector Arvind Dwivedi Station House Officer was also prepared Vide Ex.P-15. The sealed packet containing 7 kilogram & 900 gram Ganja and also the two sealed sample packets marked as Article A-1 & A-2 were entrusted by Station House Officer Arvind Dwivedi PW-5 to Head Constable Jaideo Bhoi PW-2 on 17-10-2003. On 19-10-2003 vide memo Ex.P-24 of the Superintendent of Police, Bastar, one sample packet Article A-1 along with specimen impression of the seal was sent to the Forensic Science Laboratory, Raipur through Constable Genda lal Sahu. The sample packet A-1 was received in the Forensic Science Laboratory, Raipur on 21-10-2003. Vide report dated 13-01-2004 Ex.P-26 it was opined by the Forensic Science Laboratory that the sample packet contained ganja.

3. After completion of investigation, the appellant herein was prosecuted under Section-20(b)(ii)(B) of the Act. The appellant abjured the guilt, pleaded false implication and led no evidence in defence. The prosecution examined as many as 5 witnesses. Relying upon the evidence led by the prosecution, the trial Court convicted & sentenced the appellant as aforesaid in para-1.

4. Learned counsel for the appellant has assailed the conviction of the appellant on the ground that there is non-compliance of Section-50 of the Act, since the notice Ex.P-10 does not record as to which of the options were exercised by the appellant. It is contended that since the appellant is an illiterate person, his thumb impression was taken on *Sahamati Patra* Ex.P-19 at a later point of time. It was thus contended that non-compliance of Section-50 of the Act vitiates the prosecution. It was also argued that there is variance between the Weighment panchnama Ex.P-7 and the testimony of Tejram Sahu PW-3. Ex.P-7 showed that weighment was done at the Badedongar Triangle, Pharasgaon whereas the testimony of Tejram Sahu PW-3 revealed that the weighment was done in his shop in his absence. Lastly, it was conteded that Baliram PW-4 an independent witness did not depose against the appellant in para-1 of his testimony and was unable to identify the appellant as the person from whom the ganja was seized. It was also argued that non-examination of

independent witness Chamra Ram by the prosecution creates a serious dent in the prosecution case. It was also submitted that both the samples Article A-1 & A-2 were not sent for chemical analysis to the Forensic Science Laboratory. On these grounds, learned counsel for the appellant prayed that conviction and sentence imposed on the appellant be set aside.

5. On the other hand, Shri U.K.S.Chandel, learned Panel Lawyer argued in support of the impugned judgment while contending that Section-50 of the Act has no application to the facts of the case as the person of the appellant had not been searched. He placed reliance on ***Gurubax Singh Vs. State of Haryana*** reported in 2001(Volume-1) - Cr.L.J.-1166 in support of the above contention.

6. Having heard rival contentions, I have perused the record of Special Case No.46/2003. So far as the arguments advanced by the learned counsel for the appellant relating to non-compliance of Section-50 of the Act is concerned, it has to be considered only to be rejected, because in the present case it was not the person of the appellant that had been searched but it was the ragzine bag carried by the appellant which had been searched. In view of ***Gurubax Singh Vs. State of Haryana*** (Supra), Section-50 of the Act has no application to the present case.

7. Sub Inspector Arvind Dwivedi who is the Station House Officer of the Police Station-Pharasgaon has deposed that upon receiving secret information he prepared panchnama thereof vide Ex.P-1 and also after recording reasons for not obtaining a search warrant, he proceeded to the Badedongar Triangle, Pharasgaon along with staff and witnesses Chamra Ram & Bali Ram and found that the appellant was carrying a ragzine bag. After allowing the appellant to search him as also the witnesses Sub Inspector Arvind Dwivedi searched the bag carried by the appellant and found it to contain ganja like substance. Tejram Sahu PW-3 was called for weighment of the substance found inside the ragzine bag carried by the appellant. It was categorically stated by Sub Inspector Arvind Dwivedi that weighment panchnama was prepared at the place where the search was affected and it was found that the substance in possession of the appellant was 8 kilogram. This ~~has~~ is further corroborated by weighment panchnama Ex.P-7. He has further testified that two samples of 50 g.m. each were taken from the contents of the bag and were sealed and marked as Article A-1 & A-2. This clearly finds mention in the Panchnama Ex.P-7. Specimen impression of the seal used to seal the articles was also prepared vide Ex.P-15. Sub Inspector Arvind Dwivedi PW-5 being the Station House Officer himself has further stated in para-4 that on

returning to the Police Station-Pharasgaon, the sealed sample packets as also the ragzine bag containing ganja like substance was handed over to the Moharrir of Malkhana. This part of the testimony of Sub Inspector Arvind Dwivedi is wholly unrebutted in cross-examination and also finds corroboration from Head Constable Jaidev Bhoi PW-2 who has deposed that the Station House Officer had entrusted the ragzine bag containing ganja like substance and two sealed packets and one Rs.100/- note for safe custody. The entry in the Malkhana Register Ex.P-4 and the acknowledgment Ex.P-3 has also been proved by this witness. In cross-examination, this witness has stated that he had kept the articles inside the Malkhana in the same condition in which they were entrusted to him.

8. Sub Inspector Arvind Dwivedi PW-5 further proved Ex.P-24 being memo of Superintendent of Police, Bastar for sending sample Article A-1 for chemical analysis to the Forensic Science Laboratory, Raipur. It has been clearly mentioned therein that the specimen impression of the seal used by the Station House Officer to seal the sample had also been sent along with. The report of Forensic Science Laboratory Ex.P-26 also bears the drawing of the specimen impression of the seal found on the sealed sample packet A-1 which fully tallies with the specimen impression of seal Ex.P-15. It is thus clear that

Section-55 of the Act had also been complied with, since sample packets were sealed by Station House Officer before they were entrusted for safe custody in Malkhana. There is absolutely nothing on record which would be suggestive of even the remotest possibility of tampering with the samples.

9. It is true that independent witness Chamra Ram has not been examined by the prosecution. However, Baliram PW-4 supported the prosecution case in toto on being cross-examined by the Additional Public Prosecutor. In his examination in chief, he had supported the entire proceedings by Sub Inspector Arvind Dwivedi PW-5 but had only stated that he could not identify the person from whose possession ganja had been seized. Tejram Sahu PW-3 witness of weighment panchnama also admitted the signatures on weighment panchnama Ex.P-7. The testimony of Sub Inspector Arvind Dwivedi PW-5 is wholly unrebutted, trustworthy and inspires confidence. On the basis of the report of Forensic Science Laboratory, Raipur Ex.P-26, it is fully established that the substance seized from the possession of the appellant was ganja.

10. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion

that the conviction and sentence imposed on the appellant by the trial Judge does not call for any interference.

11. In the result, the appeal is devoid of merit and is accordingly dismissed.

Sd-/
Dilip Raosaheb Deshmukh
Judge